

RESOLUTION R-2020-103

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1241 W. Thomas Road)

**BE IT AND IT IS HEREBY RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to the Construction, Use, and Indemnification Agreement dated November 3<sup>rd</sup>, 2020, between the City of Wheaton and the Pasquale Dechiara Living Trust for 1241 W. Thomas Road, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 16<sup>th</sup> day of November 2020.

  
\_\_\_\_\_  
Philip Suess  
Mayor

ATTEST:

  
\_\_\_\_\_  
Karen Bennett  
City Clerk

Roll Call Vote  
Ayes: Councilman Barbier  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Suess  
Councilwoman Robbins  
Councilman Rutledge  
Councilman Zaruba

Nays: None  
Absent: None  
Motion Carried Unanimously

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT**

**RIGHT-OF-WAY ( Thomas Road )**

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 3 day of Nov., 2020, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Pasquale Dechiara Living Trust ("Owner").

**WITNESSETH**

WHEREAS, the City is in possession of a right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, Pasquale Dechiara Living Trust (hereinafter "Owner"), the owner of the premises located at 1241 W. Thomas Rd., Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owners would like to use a portion of the City's right-of-way for the purpose of constructing and maintaining a lawn irrigation system; and

WHEREAS, the Owners acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said right-of-way.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Owner as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Pasquale Dechiara Living Trust are the owners of property located at 1241 W. Thomas Rd., Wheaton, Illinois, legally described on Exhibit A attached hereto and made a part hereof.

3.) The Owners, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby authorized to use only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The ordinances are material terms and conditions of this Agreement.

4.) The City retains the right to enter said right-of-way for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (watermain, storm and sanitary sewers) and other infrastructure. If the City performs any work within said right-of-way which causes damage to the lawn irrigation system, the Owners shall be responsible to repair the lawn irrigation system at their sole cost and expense. The Owner hereby acknowledges and agrees that the City, its employees, and agents shall have no liability to the owner for any damage, removal or other casualty to the lawn irrigation system caused by the City, its employees or agent regardless of the cause.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owners in writing at least fourteen (14) days prior to termination.

6.) Upon termination of this Agreement, the City may destroy, demolish, or remove any improvements placed upon the right-of-way by the Owners without liability.

7.) To the greatest extent permitted under Illinois law, Owners shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and expert's fees) which arise or may be caused by the negligence of the Owners, or Owners' agents, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation system described herein.

8.) This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement it shall be a temporary easement which shall expire 14 days after such construction.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

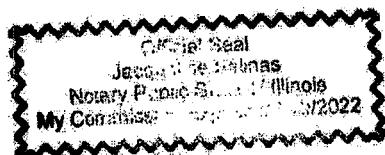
Pasquale De Chiara  
Owner

Eric De Chiara  
Owner

Subscribed and sworn to before me this 3 day of November, 2020

Jeanine Salinas Notary Public

(Notary Seal)



Philip J. Hoen  
Mayor, City of Wheaton

Attested by:

Alma Bennett Hoen  
City Clerk

**EXHIBIT A**

Legal Description:

Lot 12, In woodlawn Place, being a Subdivision of Part of Lot 1  
In muelhfelt land Partnership assessment plat, being part of  
the northwest quarter of Section 8, township 39 north, range 10  
east of the third principle meridian, according to the Plat  
there of recorded May 19, 2015, as document 122015-052811, In  
DuPage County, Illinois.

1241 Thomas      Wheaton, IL 60187  
address

P.I.N. 05-08-112-017

# **Certification and Affidavit of Trust for the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017**

Pursuant to 760 ILCS 5/8.5, this Certification and Affidavit of Trust is signed by all the currently acting Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, who declare:

1. The Trustmaker of the trust is PASQUALE DeCHIARA. The trust is revocable by the Trustmaker.
2. The Trustees of the trust are PASQUALE DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187) and ERIN M. DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187). The signature of one Trustee is sufficient to exercise the powers of the Trustee.
3. The Trustee Succession provisions are set forth in Article Three of the trust, a true copy of which may be attached to this certification.
4. The tax identification number of the trust is the Social Security number of PASQUALE DeCHIARA.
5. Title to assets held in the trust will be titled as:  
PASQUALE DeCHIARA and ERIN M. DeCHIARA, Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, and any amendments thereto.
6. An alternative description is effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor Trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
7. Excerpts from the trust document that establish the trust, designate the Trustee, and set forth the powers of the Trustee will be provided upon request. The powers of the Trustees include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests.
8. The terms of the trust provide that a third party may rely upon this Certification and Affidavit of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
9. The trust has not been revoked, modified, or amended in any way that would cause the representations in this Certification and Affidavit of Trust to be incorrect.

EXHIBIT A

Legal Description:

Lot 12, In Woodlawn Place, being a Subdivision of Part of Lot 1  
In Muchifelt Land Partnership assessment plat, being part of  
the northwest quarter of Section 8, township 39 north, range 10  
east of the third principle meridian, according to the Plat  
there of recorded May 19, 2015, as document 127015-052811, In  
DuPage County, Illinois.

1241 Thomas Wheaton, IL 60187  
address

P.I.N. 05-08-112-017

# **Certification and Affidavit of Trust for the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017**

Pursuant to 760 ILCS 5/8.5, this Certification and Affidavit of Trust is signed by all the currently acting Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, who declare:

1. The Trustmaker of the trust is PASQUALE DeCHIARA. The trust is revocable by the Trustmaker.
2. The Trustees of the trust are PASQUALE DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187) and ERIN M. DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187). The signature of one Trustee is sufficient to exercise the powers of the Trustee.
3. The Trustee Succession provisions are set forth in Article Three of the trust, a true copy of which may be attached to this certification.
4. The tax identification number of the trust is the Social Security number of PASQUALE DeCHIARA.
5. Title to assets held in the trust will be titled as:  
PASQUALE DeCHIARA and ERIN M. DeCHIARA, Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, and any amendments thereto.
6. An alternative description is effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor Trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
7. Excerpts from the trust document that establish the trust, designate the Trustee, and set forth the powers of the Trustee will be provided upon request. The powers of the Trustees include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests.
8. The terms of the trust provide that a third party may rely upon this Certification and Affidavit of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
9. The trust has not been revoked, modified, or amended in any way that would cause the representations in this Certification and Affidavit of Trust to be incorrect.

June 29, 2017

Pasquale DeChiara  
PASQUALE DeCHIARA, Trustee

Erin M. DeChiara  
ERIN M. DeCHIARA, Trustee

STATE OF ILLINOIS

)

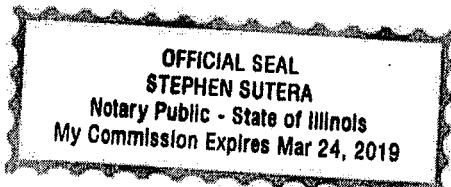
COUNTY OF DUPAGE

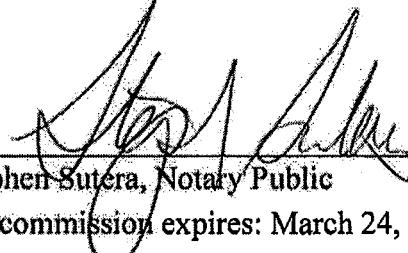
) ss.

)

This instrument was acknowledged before me on June 29, 2017, by PASQUALE DeCHIARA and ERIN M. DeCHIARA, as Trustees.

[Seal]



  
Stephen Sutera, Notary Public

My commission expires: March 24, 2019

Certification and Affidavit of Trust for the PASQUALE DeCHIARA LIVING TRUST  
Page 2

LAW OFFICES OF STEPHEN SUTERA, P.C., 4927 WEST 95TH STREET, OAK LAWN, ILLINOIS 60453 | (708) 857-7255

